

REMARKS/ARGUMENT

Claims 1-24 are pending. Claims 1, 12, 23 and 24 are independent.

Claims 1 and 24 were rejected under 35 U.S.C. § 112, second paragraph as being indefinite because of the use of the term “and/or.” As was discussed with the Examiner and his primary in the telephonic interview on February 24, 2004, the term “and/or” is indeed definite as recited at least because one of ordinary skill in the art can tell exactly what the scope of the claim is, which is the only requirement for definiteness. Further, the section of the MPEP quoted in the Office Action to support the rejection does not relate to usage of the term “and/or.” In any event, in various telephone conversations with the Examiner concerning the present application, the Examiner has indicated that this rejection will be withdrawn.

Claims 1-24 were rejected under 35 U.S.C. § 102(e) as anticipated by, or under 35 U.S.C. § 103, as obvious from, Togher. Applicants respectfully traverse.

Each of independent claims 1, 12, 23 and 24 recite a trading system with a plurality of matching engines where, at any given time, not all of the matching engines are active.

Togher discloses a plurality of *active* matching engines or arbitrator nodes. Each arbitrator node is active and may operate independently, that is, may act without communication with the other arbitrators. Further, *at the very same time* one arbitrator is processing deals, any of the other arbitrators may be simultaneously processing deals, for example in relation to other traders in other trading regions. (Col. 5, lines 40-50).

On the other hand, claims 1 and 12 recite that at any given time, only one matching engine is active performing price matching and deal execution. Thus, it is clear that the above cited teaching of Togher teaches *precisely the opposite* of what is recited in claims 1 and 12.

Yet, this is the very portion of Togher that was relied upon in the Office Action to meet these features. Applicants request that the Examiner carefully reconsider the teaching of Togher whereby various arbitrators *simultaneously* process deals, as compared to the recitation in claims 1 and 12 that at any given time only one matching engine can perform matching and deal execution. It is believed clear from the foregoing that claims 1 and 12 are patentable over Togher and withdrawal of the rejection is respectfully requested.

As to claims 23 and 24, these claims recite that at any given time, more than one, but less than all of the matching engines is active to perform identification and execution of trades.

On the other hand, in Togher, the arbitrators *never* have a passive mode. While the arbitrators may serve to relay deals made by other arbitrators to market distributors, they are never passive where they are only operating as forwarding engines for deals made by the active arbitrator. As discussed above, any arbitrator may at any time execute deals.

The Office Action appeared to rely on the teaching at column 5 that an arbitrator can identify a potential match and coordinate its final execution without any communication with the other arbitrators, as somehow teaching a passive mode. However, this simply teaches is that the arbitrators can act on their own, without the need to be in touch with other arbitrators. This is made clear by the following portion of the text that states that “at the same time, the other ARB’s can simultaneously be processing deals related to other traders in other regions.” (Col. 5, lines 40-50.)

Far from supporting the position taken in the Office Action, this portion of Togher makes clear that arbitrators, wherever they be located, and whether or not they are in communication with one another, are always in the active mode in that they can execute deals, without having to be in communication with another arbitrator. For at least the foregoing reasons, independent claims 23 and 24 are believed clearly patentable over the cited art.

The other claims in this application are each dependent from one or another of the independent claims discussed above and are therefore believed patentable for the same reasons. Since each dependent claim is also deemed to define an additional aspect of the invention, however, the individual consideration or reconsideration, as the case may be, of the patentability of each on its own merits is respectfully requested.

In a telephone interview with the Examiner on April 5, 2004, the Examiner stated that in view of advancement of understanding of the issues in this case resulting from the extensive discussions and telephone interviews in this case, and the points discussed above, if the next action is not a Notice of Allowance, it will be, at the very least, made non-final. Applicants thank the Examiner for the cordial and productive telephonic interviews in this case.

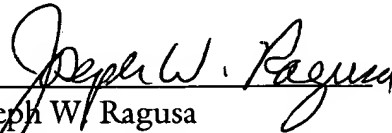
Application No.: 09/603,515

Docket No.: E3331.0495

In view of the foregoing remarks, Applicants respectfully request favorable reconsideration and early passage to issue of the present application.

Dated: May 3, 2004

Respectfully submitted,

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